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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 BENITA L. CARTER,

12 Plaintiff,

13 vs.

14 MICHAEL J. ASTRUE, Commissioner
of Social Security Administration,

15 Defendant.
16

CASE NO. CV 06-02188 RZ

MEMORANDUM OPINION
AND ORDER

17 Plaintiff sought disability benefits based on complaints of fibromyalgia,
18 irritable bowel syndrome and depression. (She presented similar complaints in a prior
19 claim, but it was denied administratively in October 2001 and she never appealed.)
20 Because none of Plaintiff's arguments for reversal of the underlying denial of benefits is
21 persuasive, the Court will affirm.
22

23 **I.**

24 **DISCOUNTING OF TREATING PHYSICIAN'S OPINION**

25 Plaintiff asserts that the Administrative Law Judge improperly rejected the
26 2003-04 views of a treating neurologist, Brian Huh, M.D., in favor of other medical
27 sources. An Administrative Law Judge may favor consultative examiners' views over
28 those of treating physicians if he "makes findings setting forth specific, legitimate reasons

1 for doing so that are based on substantial evidence in the record.” *Connett v. Barnhart*, 340
2 F.3d 871, 874 (9th Cir. 2003) (internal quotations omitted). The Administrative Law Judge
3 satisfies this burden by setting forth a detailed and thorough summary of the facts and
4 conflicting clinical evidence, stating his or her interpretation thereof, and making findings
5 reasonably supported by that evidence. *See Magallanes v. Bowen*, 881 F.2d 747, 751 (9th
6 Cir. 1989). Moreover, an “ALJ may discredit treating physicians’ opinions that are
7 conclusory, brief, and unsupported by the record as a whole . . . or by objective medical
8 findings.” *Batson v. Commissioner of Social Security Administration*, 359 F.3d 1190, 1195
9 (9th Cir. 2004).

10 Here, the Administrative Law Judge’s decision preferring the consistent
11 opinions of several other doctors over the outlying opinion of Dr. Huh satisfies the
12 foregoing rules. As suggested by *Magallanes*, the opinion includes a detailed and thorough
13 summary of the key clinical evidence, followed by the Administrative Law Judge’s
14 interpretations and findings, which enjoy substantial evidentiary support. *See*
15 Administrative Record (AR) 14-17. The Administrative Law Judge primarily relied on the
16 records and June 2002 opinion of examining orthopedist Anh-Tat Hoang, M.D., who
17 recorded Plaintiff’s subjective complaints of great pain but found her to have only mild
18 symptoms, “well controlled with medication.” *See* AR 13 (*citing* AR 161-66). Dr. Hoang
19 opined that Plaintiff could perform a full range of medium work, with no postural or
20 manipulative restrictions. AR 165. A March 2002 MRI of Plaintiff’s lumbar spine showed
21 no abnormalities, AR 150, supporting Dr. Hoang’s rather hale assessment of her; a June
22 2003 MRI showed some “disc desiccation” but no major abnormalities. AR 245.

23 The Administrative Law Judge also relied on the July 2002 assessment by
24 state agency physicians, AR 192-99, who expressly found “Clmt’s reported limitations not”
25 consistent with their objective observations, AR 197 (emphasis in original); *see* AR 193
26 (recording Plaintiff’s subjective complaints), and concluded she was capable of the full
27 range of medium work. (The underlying opinion also summarized the views of psychiatrist
28 Gennady Musher, M.D., although those views do not appear directly related to Dr. Huh’s.)

1 The Administrative Law Judge ultimately adopted a more conservative view of Plaintiff's
2 abilities, finding she was capable of a limited range of light work, rather than the full range
3 of medium work. *See* AR 15.

4 After summarizing the foregoing reports in his opinion, the Administrative
5 Law Judge summarized Dr. Huh's subsequent reports and explained why he (the judge)
6 found them unpersuasive:

7
8 In a report dated in October 2003, Brian Huh, a
9 neurologist[,] noted that the claimant suffers form [sic]
10 peripheral neuropathy, lumbar nerve compression, chronic
11 fatigue syndrome and myofascial pain syndrome. Dr. Huh
12 found that based on his evaluation of the record, Ms. Carter
13 would miss work more than three times a month. He found that
14 the most severe limitations would be related to vertigo, fatigue
15 and brain fog. The undersigned finds that the initial assessment
16 report showed the claimant's symptoms not [supported by] any
17 objective physical status findings other than the unsupported
18 conclusion that the claimant maintains the inability to perform
19 the activities of daily living and extreme limitation in her
20 functioning. Additionally, [a] laboratory report showed
21 antinuclear antibodies (ANA) level was not positive[,] and the
22 pressure points regarding the claimant's fibromyalgia were not
23 identified. In fact, it appears Dr. Huh did not review the MRI
24 findings dated in March 2002 and June 2003, which revealed no
25 significant abnormalities ([AR 150, 245]). Therefore, the
26 undersigned finds the above reports [by Dr. Huh] to be
27 completely devoid of any objective findings and thus thoroughly
28 conclusory and without evidentiary weight.

1 AR 13. In addition, the Administrative Law Judge found Plaintiff's subjective account of
2 her symptoms to be exaggerated. (Although Plaintiff challenges this finding, the Court
3 concludes it is sound, as discussed below.) This provides further support for discrediting
4 Dr. Huh's opinion, which relied substantially on Plaintiff's subjective complaints. In sum,
5 even if other interpretations of the medical evidence were possible, the Administrative Law
6 Judge's explanation for preferring other examiners' views over that of Dr. Huh was legally
7 sound and supported by substantial evidence.

8 In a corollary to this argument, Plaintiff asserts that a hypothetical question
9 posed to the vocational expert was incomplete because it failed to include the sorts (and
10 degrees) of impairments found by Dr. Huh. Because it was not improper to discount
11 Dr. Huh's findings, however, it also was not improper to exclude such findings from the
12 hypothetical question.

13 14 II.

15 PLAINTIFF'S CREDIBILITY

16 Plaintiff claims that the Administrative Law Judge improperly found her
17 subjective account to be less than fully credible. Generally, once a claimant has supplied
18 objective medical evidence of a malady that "could reasonably be expected to produce"
19 some degree of pain or other subjectively-reported symptoms, the Administrative Law
20 Judge may discount the claimant's testimony about the degree of pain, and how that pain
21 affects the claimant's ability to work, only if the judge supplies specific, cogent reasons
22 supported by substantial evidence in the record, *see Bunnell v. Sullivan*, 947 F.2d 341 (9th
23 Cir. 1991) (*en banc*); *Smolen v. Chater*, 80 F.3d 1273 (9th Cir. 1996), sufficient to permit
24 this Court to conclude that the Administrative Judge's disbelief was not arbitrary. *See*
25 *Orteza v. Shalala*, 50 F.3d 748, 750 (9th Cir. 1994).

26 The Administrative Law Judge complied with the *Bunnell* standard by stating
27 multiple reasons, supported by substantial evidence, for finding Plaintiff's account of her
28 subjective symptoms not fully credible:

1 Although the claimant may suffer some pain and symptoms from
2 her condition, the undersigned finds that the record does not
3 support her allegations [as to the degree of pain and mental
4 problems]. The claimant presents herself as being much worse
5 than that which is contained in the record. As previously noted,
6 the claimant has alleged problems with anxiety and depression.
7 Nonetheless, the claimant has never required any hospitalization
8 for her mental condition. Additionally, the claimant has alleged
9 severe fibromyalgia and irritable bowel syndrome. However,
10 the record fails to indicate that the claimant has sought or
11 received any regular treatment for fibromyalgia and irritable
12 bowel syndrome or that these conditions resulted in any
13 significant functional limitation. It is reasonable to assume[,] if
14 the claimant's mental condition or physical problems were as
15 disabling as alleged[,] that she would seek more aggressive
16 treatment to improve her alleged impairments. Hence, the
17 claimant's failure to seek more aggressive treatment for her
18 condition detracts from her credibility and indicates that she is
19 exaggerating the severity of her pain and symptoms.
20 Furthermore, the record indicates that the claimant's laboratory
21 report showed ANA level was not positive and pressure points
22 regarding the claimant's alleged fibromyalgia were not
23 identified.

24 . . . Since symptomatology can range widely, the
25 credibility of the claimant is the significant limiting factor.
26 Accordingly, while none of the above factors are conclusive by
27 themselves, after a review of the entire record, the undersigned
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1 finds that the claimant's allegations are not fully credible to the
2 extent alleged.

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4 AR 14-15.

5 Among the specific and legitimate reasons, supported by substantial evidence,
6 cited by the Administrative Law Judge are Plaintiff's pursuit of more-conservative
7 treatments than her subjective assertions would suggest; and the medical reports of several
8 examiners, which not only showed a lack of supporting objecting evidence, but also
9 affirmatively showed Plaintiff was far less hindered by mental and physical impairments,
10 including the side effects of medication, than she alleged. That there may be other
11 interpretations of a claimant's testimony and behavior that are reasonable, as Plaintiff
12 argues, does not mean that the Administrative Law Judge erred. As long as his
13 interpretation is reasonable and supported by substantial evidence, it is not the role of the
14 Court to second-guess it. *Rollins v. Massanari*, 261 F. 3d 853, 857 (9th Cir. 2001). The
15 underlying opinion satisfied the requirements for discounting Plaintiff's credibility.
16 (Plaintiff's separately-stated argument challenging the Administrative Law Judge's finding
17 about the subjectively-reported side effects of her medications, *see* Pl.'s Mem. at 7, fails
18 for the same reasons.)

19
20 **III.**

21 ***RES JUDICATA***

22 Plaintiff asserts that the Administrative Law Judge improperly found that she
23 failed to overcome the presumption of continuing non-disability. Although *res judicata*
24 bars re-litigation of a disability determination concerning an earlier period of time, it does
25 not do so invariably for a new disability application focused on a later period of time.
26 *Lester v. Chater*, 81 F.3d 821, 827 (9th Cir. 1996). Rather than creating preclusion, a prior
27 adverse decision creates a presumption, a presumption of continuing nondisability, which
28 the claimant can rebut through changed circumstances. *Taylor v. Heckler*, 765 F.2d 872,

875 (9th Cir. 1985). The claimant has the burden of showing such changed circumstances. *Fair v. Bowen*, 885 F.2d 597, 600 (9th Cir. 1989); *Taylor, supra*. Such changed circumstances can consist of an increased severity of an impairment which was previously considered, *Taylor, supra*, or of a *different* impairment from the one considered when the prior nondisability determination was made, *Gregory, supra*, or of the passage of time which thereby changes the vocational classification appropriate for a person of a certain age, *Chavez v. Bowen*, 844 F.2d 691 (9th Cir. 1988). Here, Plaintiff's submissions must show a material worsening of circumstances since October 21, 2001, the date of the prior administrative denial.

Here, the "new evidence" to which Plaintiff points is unavailing, for at least three reasons. First, Plaintiff principally relies on the reports of Dr. Huh, *see* Pl.'s Mem. at 3-4, but the Court already has determined that discounting those reports was not error. Second, as the Appeals Council noted, Plaintiff also appears to rely on large portions of the record that are duplicates of other exhibits which the Administrative Law Judge properly considered without error. *See id.*; AR 5 (Appeals Council comment); *see also* AR 284-310, 316-20 (duplicate exhibits). Third and finally, also as pointed out by the Appeals Council, part of the "new" evidence, namely reports from Rosabel Ribares Young, M.D., M.S., pertains to a period preceding the prior administrative denial in October 2001, which denial Plaintiff did not appeal. *See* AR 5, 311-15. Even if error occurred, moreover, Plaintiff's submissions fail to show that there is a reasonable possibility that the cited evidence would change the outcome, were the Court to order a remand. *See Booz v. Secretary of Health and Human Svcs.*, 734 F.2d 1378, 1380-81 (9th Cir. 1984).

IV.

IMPAIRMENTS IN COMBINATION

Plaintiff asserts that the Administrative Law Judge failed to consider her impairments in combination. This argument, which appears to rely primarily on Dr. Huh's reports again, is belied not only by the rather thorough summary of the medical evidence

1 | noted above, but also by the fact that the sole hypothetical question posed to the vocational
2 | expert included all of the impairments found by the Administrative Law Judge. *See* AR
3 | 357, 359. Plaintiff of course challenges the hypothetical's completeness, but the Court
4 | already has rejected that argument.

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6 | **V.**

7 | **RESIDUAL FUNCTIONAL CAPACITY**

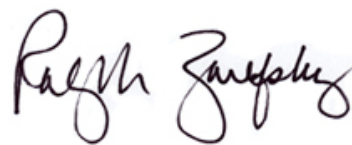
8 | Plaintiff's remaining argument, that the Residual Functional Capacity finding
9 | was improper, hangs upon the success of several of her foregoing arguments, most
10 | centrally that it was error to reject Dr. Huh's opinion. Because those arguments are
11 | unpersuasive, she cannot succeed on this one either.

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13 | **VI.**

14 | **CONCLUSION**

15 | For the foregoing reasons, the decision is affirmed.

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17 | DATED: July 18, 2007

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21 | RALPH ZAREFSKY
22 | UNITED STATES MAGISTRATE JUDGE
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